

①
Supreme Court, U.S.
FILED

No. _____ 05-880 JAN 11 2006

OFFICE OF THE CLERK

In The
Supreme Court of the United States

SANDRA L. LaHAYE,

Petitioner,

vs.

ISRAEL AIRCRAFT INDUSTRIES,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

ARTHUR ALAN WOLK
THE WOLK LAW FIRM
1710-12 Locust Street
Philadelphia, Pennsylvania 19103
(215) 545-4220

Attorney for Petitioner

QUESTIONS PRESENTED

1. Did the Court of Appeals incorrectly interpret the Rolling Provision of the General Aviation Revitalization Act, 49 U.S.C. § 40101 note § 2(a)(2) to require a design change of a replacement part when the plain statutory language does not condition application of the Rolling Provision on a subsequent design change?

2. Did the Court of Appeals incorrectly afford an Israel based general aviation manufacturer protection under a statute of repose whose purpose is to revitalize the United States general aviation industry?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
FACTUAL BACKGROUND	3
PROCEDURAL BACKGROUND	5
REASONS FOR GRANTING THE PETITION	7
GARA 49 U.S.C. § 40101 NOTE § 2(a)(2) DOES NOT REQUIRE DESIGN CHANGE	7
GARA PROTECTION DOES NOT EXTEND TO FOREIGN MANUFACTURERS	12

TABLE OF AUTHORITIES

	Page
<i>Caldwell v. Enstrom Helicopter Corp.</i> , 230 F.3d 1155 (9th Cir. 2000).....	6, 9, 10
<i>Carolina Industries Productions, Inc. v. Learjet, Inc.</i> , 189 F. Supp.2d 1147 (D.Kan. 2001).....	10
<i>Hiser v. Bell Helicopter Textron, Inc.</i> , 111 Cal.App.4th 640, 4 Cal.Rptr.3d 249 (Cal. App. 2003).....	11
<i>Lyons v. Agusta S.P.A.</i> , 252 F.3d 1078 (9th Cir. 2000)	9, 13
<i>Mason v. Schweizer Aircraft Corp.</i> , 653 N.W.2d 543 (Iowa 2002).....	10

FEDERAL STATUTES

Foreign Sovereign Immunities Act, 28 U.S.C. § 1603(b)(2).....	1
General Aviation Revitalization Act of 1994 (GARA) 49 U.S.C. § 40101	<i>passim</i>
28 U.S.C. § 1330	1
29 U.S.C. § 1254(1).....	1

FEDERAL REGULATIONS

14 C.F.R. § 39.3.....	4
14 C.F.R. § 21.277.....	4

RULES OF CIVIL PROCEDURE

Federal Rule of Civil Procedure 59(b).....	1
--	---

TABLE OF AUTHORITIES – Continued

	Page
CONGRESSIONAL RECORD	
H.R. Rep. No. 103-525(I) (1994).....	8
H.R. Rep. No. 103-525(II), at 1647 (1994)	8
H.R. Rep. No. 103-525(I), at 1646 (1994).....	12
1994 U.S.C.C.A.N. 1654	13

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is unreported and attached at App. 1a-6a. The opinion of the United States District Court for the Western District of Washington granting partial summary judgment is also unreported and attached at App. 7a-23a.

JURISDICTION

The district court had jurisdiction over this matter pursuant to 28 U.S.C. § 1330. Defendant Israel Aircraft Industries, Ltd. (hereafter "IAI") alleged it was a foreign state as defined by the Foreign Sovereign Immunities Act, 28 U.S.C. § 1603(b)(2). This Court has jurisdiction to hear this appeal pursuant to 29 U.S.C. § 1254(1).

On September 24, 2003, the district court entered final judgment in favor of defendant IAI. (App. 27a-35a). Plaintiff Sandra LaHaye filed her post-trial motion on October 8, 2003 within ten days the entry of final judgment pursuant to F. R. Civ. P. 59(b). On January 22, 2004, the district court denied all of LaHaye's post-trial motions. (App. 36a-43a). LaHaye filed her Notice of Appeal on February 16, 2004. (App. 45a-46a).

On August 9, 2005, The Ninth Circuit Court of Appeals entered a written opinion affirming the trial court's orders at issue in the appeal. (App. 1a-6a). On August 22, 2005, plaintiffs filed a petition for rehearing *en banc*. (App. 44a). The Ninth Circuit Court of Appeals denied the Petition for Rehearing on October 13, 2005. (App. 44a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The important federal issues presented in this case involve the interpretation of The General Aviation Revitalization Act of 1994 (GARA), 49 U.S.C. § 40101 note. GARA is a statute of repose barring tort actions against manufacturers of general aviation aircraft if the accident giving rise to a cause of action occurs after the statutory eighteen year period of limitation expires.

The Ninth Circuit Court of Appeals incorrectly conditioned application of the provision of GARA that restarts the eighteen year period of limitation when a new replacement part is added to the aircraft (hereafter "The Rolling Provision") codified at GARA 49 U.S.C. § 40101 note § 2(a)(2) to require a design change in the replacement part which is also causative of the accident. GARA 49 U.S.C. § 40101 note § 2(a) provides:

(a) In general. – Except as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred –

(1) after the applicable limitation period beginning on –

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or

(2) with respect to any new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury, or damage, after the applicable limitation period beginning on the date of completion of the replacement or addition

GARA defines the term "limitation period" to mean "18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft." 49 U.S.C. § 40101 note § 3(3).

In addition, the Ninth Circuit Court of Appeals incorrectly held that GARA affords protection to foreign general aviation manufacturers such as IAI. This holding contradicts GARA's purpose which was to revitalize the United States general aviation industry which Congress perceived to be disadvantaged by the foreign general aviation industry.

STATEMENT OF THE CASE

Factual Background

Peter LaHaye was killed when his Israel Aircraft Industries, Ltd. Westwind 1124A business jet crashed to the ground on December 12, 1999. The crash occurred because the trim actuator failed to secure the horizontal stabilizer to the airframe. The horizontal stabilizer is the rear control surface of the aircraft which controls the

upward and downward pitch of the aircraft. The trim actuator is an extremely critical component of the flight control system and if the jackscrews unscrew from the rod end adaptors, the horizontal stabilizer will disconnect from the airframe and flap freely in the wind causing the total loss of control of the aircraft. (App. 58a-63a, 51a).

The trim actuator is operated by two jackscrews and two motors. (App. 48a). The jackscrews connect to separate rod end adapters, which attach to the leading edge of the horizontal stabilizer and move the leading edge of the stabilizer up and down to control the aircraft's pitch. (App. 48a, 49a). A single tie rod inserts through two eyelets in the jackscrews to prevent the jackscrews from screwing out of the rod end adaptors. (App. 48a).

In 1996, IAI issued Service Bulletin (SB) 1124-27-133¹ which called for the disassembly of the trim actuator to inspect the integrity of the jackscrews and tie rods. The Federal Aviation Administration (FAA) made SB 1124-27-133 mandatory by issuing Airworthiness Directive² (AD) 98-05-09. IAI incorporated the SB 1124-27-133 procedure in its maintenance manual.

On September 1, 1997, IAI issued SB 1124-27-136, which required all trim actuators to be returned to the original manufacturer for remanufacture, overhaul and modification with replacement parts. (App. 54a-57a). The

¹ A Service Bulletin is a supplement to the maintenance manual. ER 113-114.

² The FAA issues an Airworthiness Directive when it determines that an unsafe feature or characteristic caused by manufacture or design exists. 14 C.F.R. § 21.277. Airworthiness Directives are legally enforceable. 14 C.F.R. 39.3.

new replacement actuators had new jackscrews, new part numbers, new tie rods, new torque tubes, and modified jackscrew motors. (App. 58a-80a). Thereafter, the FAA issued AD 98-20-35 which made SB 136 mandatory. (App. 81a-86a). Peter LaHaye, owner of Panda Leasing Company (the owner of the aircraft), replaced the accident aircraft's trim actuator in February of 1998 in accordance with SB 1124-27-136 prior to the issuance of AD 98-20-35. (App. 87a).

Procedural Background

On June 7, 2001 Peter LaHaye's wife and personal representative of his estate, filed a complaint alleging the conduct of IAI and several other defendants proximately caused the accident. With respect to IAI, LaHaye alleged (1) the design of the trim actuator was defective and proximately caused the accident, and (2) IAI's maintenance manual was defective and proximately caused the accident.

On February 6, 2003, IAI filed a motion for partial summary judgment alleging the GARA barred LaHaye's claim that the trim actuator was defectively designed. (App. 9a-11a). In her opposition to partial summary judgment, LaHaye argued that (1) GARA does not protect foreign manufacturers, (2) IAI was not the "manufacturer" of the trim actuator, (3) the trim actuator had been replaced as a new part within the period of repose, and (4) IAI knowingly misrepresented, withheld, and concealed required information from the FAA. (App. 11a-23a).

The trial court granted IAI's motion for partial summary judgment and held that GARA barred plaintiffs' claim that the trim actuator was defective. In rejecting

LaHaye's replacement part argument, the district court relied on the Ninth Circuit Court of Appeals' decision in *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155, 1156 (9th Cir. 2000) and held even though the causative parts of the trim actuator had been replaced within the period of repose, GARA barred LaHaye's design defect claim "because the allegedly defective design of the trim actuator had been in the marketplace for more than 18 years and had undergone no substantive alteration..." (App. 12a-17a). The district court also determined that Congress intended GARA to protect foreign manufacturers such as IAI.

IAI filed a separate motion for summary judgment seeking the dismissal of plaintiff's claim that the maintenance manual was defectively designed on the basis that there was no record evidence to show the defects in the maintenance manual proximately caused the accident. (App. 24a-26a). The trial court denied this motion for summary judgment and ordered a bench trial on the issue of whether or not the December 12, 1999 accident was proximately caused by the IAI issued maintenance manual. (App. 24a-26a).

A bench trial commenced on September 8, 2003 and was concluded on September 13, 2003. On September 24, 2003, the trial court issued a Memorandum of Decision finding in favor of IAI because it determined that while the maintenance manual was erroneous and misleading, it did not proximately cause the accident. (App. 28a-35a).

On appeal, plaintiffs argued *inter alia* that the district court improperly afforded GARA protection to IAI. On August 9, 2005, the Ninth Circuit Court of Appeals held "[a]s the district court reasoned, because the allegedly defective aspect of the design had been in the marketplace

for over eighteen years, it was barred by GARA's statute of repose." (App. 4a). In addition, the court held that GARA affords protection to foreign manufactures of general aviation aircraft. (App. 3a-4a).

REASONS FOR GRANTING THE PETITION

The clear statutory language of GARA Rolling Provision codified at 49 U.S.C. § 40101 note. § 2(a)(2) does not require a replacement component, subassembly, system, or other part to incorporate a design change. In addition, GARA was enacted to "revitalize" the United States' general aviation industry which had suffered in part due to the competition of foreign competitors. Congress did not intend for GARA to protect foreign manufacturers such as IAI. The Ninth Circuit Court of Appeals' opinion is in direct conflict with the clear statutory language and the underlying purpose of GARA. This Court should correct the error in order to preserve the rights of general aviation aircraft accident victims who are killed or injured as a result of a replacement part covered by Section 2(a)(2) of GARA.

GARA 49 U.S.C. § 40101 note. § 2(a)(2) Does Not Require Design Change

GARA's Rolling Provision restarts the limitation period "with respect to any new component, system, subassembly, or other part . . . which is alleged to have caused such death, injury, or damage after the applicable limitation period beginning on the date of the completion of the replacement or addition." GARA 49 U.S.C. § 40101 note § 2(a)(2). The statute does not require the new component,